Supreme Court, U.S.
FILED
OCT 7 1988
JOSEPH F. SPANIOL, JR.
CLERK

(3)

No. 87-2111

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

EASTER HOUSE,

V.

UNITED STATES OF AMERICA

PETITIONER'S REPLY TO MEMORANDUM OF RESPONDENT

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The Government acknowledges (G. Memo 5-6) that the Third, Seventh and Ninth Circuits have held that courts must accept facts in the administrative record as true in a declaratory judgment suit respecting federal tax exemption. But it erroneously contends that the courts

below did not violate that rule because they were not required to accept as true Petitioner's "argument" in the administrative record. The Government's contention is wrong insofar as it characterizes the factual statements of Petitioner, ignored or rejected by the lower courts, as "argument'.

Contrary to the Government's position (G. Memo. 5), the statement in the administrative record that Petitioner's fees are solely established to cover its costs was not a mere argument, but a fact explicated by several pages of subsidiary facts. The administrative record explained at exhaustive length the extraordinary costs Petitioner incurred to provide highest quality, private care to mothers and babies (A547, 576-589, 592-593, 786-787); its reduction of

adoption fees to poor prospective parents (A813-814); its needs for financial reserves to cover catastrophic risks (e.g., legal claims and unusual medical costs) (A816); its need for funds to purchase a building (A815); and its practice of loaning or granting funds to other charitable adoption agencies (A816, 871-872). If such statements of fact could be disregarded simply by calling them "arguments", the courts could nullify Code Section 7428 and its core principle of basing exemption rulings on the assumption that administrative record facts are true.[1]

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[1] The administrative record states that petitioner made loans to other adoption agencies in support of their charitable activites. (A816, 872-873). Contrary to the view of the Government (G. Memo 5) and the lower courts, loaning funds to other organizations for charitable purposes was a proper

Petitioner submitted over 500 pages of detailed facts substantiating its position that all its activities are essential to accomplish its exempt charitable purposes. The lower courts' dismissal of such facts as mere "argument" fundamentally conflicts with the rule that statements in the administrative record must be taken "at face value". Dumaine Farms v. Commissioner, 73 T.C. 650, 665 (1980). The decisions below will seriously curtail the beneficial purpose of Section 7428 to provide a relatively quick and efficient forum for an initial determination of eligibility for tax

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charitable purpose, whether or not the organizations were under common control. Rev. Rul. 64-182, 1964-1 C.B. 186; Rev. Rul. 67-149, 1967-1 C.B. 133; Roche's Beach, Inc. v. Commissioner, 96 F.2d 776, 778 (2d Cir. 1938).

exemption and receipt of tax deductible contributions. Instead, if the decisions below are allowed to stand, Section 7428 proceedings will take on the character of full scale audits of the organizations' activities.

CONCLUSION

For the reasons stated here and in our petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Leonard J. Henzke,